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# THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

## Impunity

## Report of the Secretary-General

## Addendum

## Reply received from the Government of Canada

### Introduction

1. The Government of Canada has submitted the following information in response to requests of the Secretary-General in accordance with Commission resolution 2000/70, entitled "Impunity". In particular, the Government of Canada has provided information on the legislative, administrative or other steps it has taken to combat impunity for human rights violations in its territory, as well as on the provision of remedies available to victims of such violations. In addition, the Government has included its views on the issue of the possible appointment of an independent expert charged with examining all aspects of the issue of impunity of perpetrators of human rights violations.

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## I. LEGISLATIVE STEPS TO COMBAT IMPUNITY

### A. Crimes against Humanity and War Crimes Act

2. On 10 December 1999, the Minister for Foreign Affairs and International Trade submitted "An Act respecting genocide, crimes against humanity and war crimes and to implement the Rome Statute of the International Criminal Court, and to make consequential amendments to other Acts" to the Canadian Parliament. This Act, referred to as the Crimes Against Humanity and War Crimes Act, was adopted on 29 June 2000. The Act entered into force on 29 October 2000.

3. The Crimes against Humanity and War Crimes Act implements in Canada the Rome Statute of the International Criminal Court (Rome Statute). In addition, it strengthens Canada's ability to ensure that our country is not a safe haven for war criminals.

**Crimes**

4. The Act creates offences of genocide, crimes against humanity and war crimes based on customary and conventional international law, including the Rome Statute. The adoption of these crimes allows Canada to take advantage of the complementarity provisions of the Rome Statute.

**Jurisdiction**

5. The Act incorporates several grounds of jurisdiction. Canada adopted active nationality and territorial jurisdiction, in order to ensure that it asserted jurisdiction over crimes committed on Canadian territory and by Canadians anywhere in the world. In addition, Canada adopted passive nationality jurisdiction, to cover crimes committed against Canadian nationals. In some situations, active and passive nationality is also extended to include other persons who are associated with a State that was engaged in an armed conflict against Canada or was allied with Canada in an armed conflict. As well, the Act asserts universal jurisdiction, allowing Canada to prosecute anyone (regardless of nationality) who is subsequently present in Canada after the commission of the crimes listed in the Act. This approach is consistent with past Canadian war crimes policy.

**Offences of Breach of Command/Superior Responsibility**

6. The Act includes offences of breach of responsibility by military commanders and other superiors. Failure of a military commander or superior to exercise control over persons under his or her authority, which results in a subordinate committing genocide, a crime against humanity or a war crime, could result in the criminal responsibility of the military commanders, or superiors, if they fail to take measures to prevent or repress the crime or fail to submit the matter to the competent authorities for investigation.

**Defences**

7. Canadian and international defences are available to persons accused of crimes listed in the Act, with some exceptions. It is not a defence that an offence was committed in obedience to the law in force at the time and in the place of its commission. The defence of superior orders is in accord with that provided in the Rome Statute. In addition, the defence of superior orders cannot be based on a belief that the order was lawful if the accused's belief is based on information about an identifiable group of persons that encouraged, was likely to encourage or attempted to justify the commission of inhumane acts or omissions against the group. It is also not a defence that the offence was committed in obedience to or in conformity with the law in force at the time and in the place of its commission.

8. A person may not plead *autrefois acquit, autrefois convict* or pardon if the person was tried by a foreign court and the proceedings were for the purpose of shielding the person from criminal responsibility, or were not otherwise conducted independently or impartially and were conducted in a manner that, in the circumstances, was inconsistent with an intent to bring the person to justice.

**Sentences and parole eligibility**

9. The Act provides for penalties ranging up to and including life imprisonment for the crimes listed therein. Where intentional killing forms the basis of the offence, mandatory minimum sentences (life imprisonment) apply. The parole eligibility rules for crimes involving intentional killing are the same as those for the offence of murder under the Criminal Code. Ordinary parole rules apply for all other sentences.

**Offences against the administration of justice of the ICC**

10. The Act includes offences to protect the integrity of the processes of the International Criminal Court (ICC) and to protect judges and officials of the ICC, as well as witnesses. In particular, the Act includes the offences of obstructing justice, obstructing officials, bribery of judges and officials, perjury, fabricating or giving contradictory evidence, and intimidation. Witnesses who have testified before the ICC are protected under the Criminal Code from retaliation against them or their families. Other existing Criminal Code offences also apply to protect judges and officials from harm when they are in or outside of Canada. All of these offences apply when committed in Canada or by Canadian citizens outside Canada.

**Proceeds of crime offences**

11. The Act also ensures that the possession and laundering of proceeds from these new offences are also offences. This ensures that proceeds located in Canada resulting from the commission of genocide, crimes against humanity or war crimes can be restrained, seized or forfeited in much the same way as proceeds from other criminal offences in Canada.

**Crimes Against Humanity Fund**

12. Money in Canada obtained from the disposal of forfeited assets or the enforcement of fines or reparation orders of the ICC will be paid into the Crimes Against Humanity Fund, established under the Act. The Attorney-General of Canada may then make payment from that Fund to the ICC, the ICC Trust Fund established under the Rome Statute or directly to victims.

**Surrender**

13. The Act implements Canada's obligation to arrest and surrender persons sought by the ICC for genocide, crimes against humanity and war crimes. Canada has adopted a surrender process which is based on a streamlined version of Canada's existing extradition process. In 1999, Canada amended its Extradition Act to allow for surrender to the International Criminal Tribunals for the Former Yugoslavia and Rwanda. The Act therefore provided for an additional amendment to add the ICC to this list. Canada also eliminated all grounds for refusal that are normally applicable in cases of a State-to-State extradition and indicated that they did not apply to a request for surrender by the ICC. The Extradition Act was also amended to ensure that a person who is the subject of a request for surrender would not be able to claim statutory or common law immunity as a bar to surrender to the ICC. Finally, Canada amended the Extradition Act to allow for evidence to be adduced in a summary form.

**Mutual Legal Assistance**

14. Canada will be able to assist the ICC to investigate offences of genocide, crimes against humanity and war crimes in much the same way that it currently assists States with normal criminal investigations. The Mutual Legal Assistance in Criminal Matters Act has been amended to permit Canada to provide a wide range of assistance to the ICC, from the identification of persons to gathering evidence in Canada for the purposes of prosecution.

15. The Crimes Against Humanity and War Crimes Act is available online at

http://lois.justice.gc.ca/en/C-45.9/index.html.

## B. Immigration Act

16. On 11 February 2001, Bill C-11 was tabled, which will replace the present Immigration Act entirely and permit the immigration and refugee system to be more responsive to the needs and challenges of the future. The underlying premise of the new bill is to open the front door to genuine immigrants and refugees but close the back door to persons who do not need or who abuse Canada's immigration and refugee system, such as war criminals. While the new bill does not contain any additional provisions that specifically deal with the issue of war criminals, certain of the sections have application to suspected war criminals, as well as to other categories or persons involved in very serious criminality, such as organized crime or terrorism. These new provisions will streamline the process to remove these persons.

## II. ADIMINISTRATIVE STEPS TO COMBAT IMPUNITY

17. Over the past several years, the Government of Canada has taken significant measures, both within and outside of our borders, to ensure that appropriate enforcement action is taken against suspected war criminals, regardless of when or where the crimes occurred. These measures to combat impunity include cooperation with international courts, foreign governments and enforcement action by one of the three departments mandated to deliver Canada's War Crimes Program: Citizenship and Immigration Canada, the Department of Justice and the Solicitor-General of Canada (as the Minister responsible for the Royal Canadian Mounted Police).

18. There are several remedies available to deal with those suspected of having committed genocide, crimes against humanity or war crimes:

Criminal prosecution in Canada;

Extradition to a foreign government;

Surrender to an international tribunal;

Revocation of citizenship and deportation;

Denial of a visa to persons outside of Canada;

Denial of access (exclusion) to Canada's refugee determination system; and

Inquiry and removal from Canada under the Immigration Act.

19. The following Canadian statutes authorize enforcement action against those suspected of having committed genocide, crimes against humanity or war crimes: Crimes Against Humanity and War Crimes Act; Extradition Act; Immigration Act; and Citizenship Act. The full text of the four statutes can be found on the Department of Justice web site at

http://www.canada.justice.gc.ca.

20. Following the direction of the Government for a more integrated War Crimes Program, the Interdepartmental Operations Group was created in 1998 as the vehicle through which Citizenship and Immigration Canada, the Department of Justice and the Royal Canadian Mounted Police (RCMP) coordinate all war crimes operations undertaken by the Government of Canada. The Interdepartmental Operations Group ensures that the Government of Canada has properly addressed all allegations of genocide, crimes against humanity and war crimes against Canadian citizens or persons present in Canada. One of its purposes is to ensure that Canada complies with its international obligations. This includes the investigation, prosecution and extradition or surrender of war criminals, as well as cooperation with the International Criminal Tribunals for the Former Yugoslavia and Rwanda.

21. The Interdepartmental Operations Group reviews all war crimes files, determining the appropriate course of action and channelling the files to the appropriate governmental authority. During 2000-2001, 74 new files were reviewed, bringing to 944 the total number reviewed since the creation of the Group in 1998. As a result of this review, files were opened by the Department of Justice War Crimes Section for allegations of genocide, crimes against humanity and war crimes. The Section's current workload also consists of a significant inventory of Second World War files and 172 modern war crimes files. The RCMP War Crimes/Immigration and Passport Section has 71 modern cases and over 100 Second World War cases in its inventory. The modern cases under investigation are cases that may warrant prosecution under the Crimes Against Humanity and War Crimes Act. It also has assisted the International Criminal Tribunals for the Former Yugoslavia and Rwanda and facilitated the interviewing of a number of witnesses in Canada for their ongoing investigations. The Department of Citizenship and Immigration screens all persons wishing to come to Canada for possible war crimes involvement, and selected posts abroad have special security vetting procedures to ensure that potential war crimes cases are identified and subjected to thorough checks. The Canadian Security Intelligence Service conducts background checks on applicants for permanent residence or for citizenship, and refers names of individuals who may be implicated in genocide, crimes against humanity or war crimes to Citizenship and Immigration Canada. During this past year, the Department of Citizenship and Immigration's Resource Centre, designed to provide research support to regional field officers, immigration analysts and other enforcement partners, responded to 1,182 inquiries, more than double the number of the previous year.

22. Citizenship and Immigration Canada, the Department of Justice and the Solicitor-General of Canada produce an annual report on Canada's War Crimes Program, available at http://www.cic.gc.ca/english/pub/war2001.html. This report is made available to the public on the Internet at and in printed form, and is usually reported on by the Canadian press.

## III. OTHER STEPS TO COMBAT IMPUNITY

23. In February 2001, the Minister for Foreign Affairs reappointed Irwin Cotler, Member of Parliament, to serve as his Special Adviser on the International Criminal Court to promote the International Criminal Court nationally and internationally.

24. In September 2000, the Minister for Foreign Affairs launched Canada's International Criminal Court Campaign. As part of this campaign, Canada has provided funding and experts to workshops and conferences aimed at promoting ratification/accession and implementation of the Rome Statute of the International Criminal Court. These workshops have been held in the Cook Islands and New Zealand (for the South Pacific); Jordan (for the Middle East and North Africa); Cameroon (for Central Africa); Trinidad (for the Commonwealth Caribbean); Portugal (for lusophone States); Ghana (for West Africa); Costa Rica (for Organization of American States members); Jamaica (for the Caribbean); and Namibia (for southern Africa).

25. Canada's priority for 2001-2002 is to continue to promote ratification/accession and implementation of the Rome Statute. Comprehensive implementation by all States parties of their obligations under the Rome Statute is key to ensuring the level of cooperation required for the effective operation of the Court. Canada plans to focus on countries and regions that have not yet ratified or implemented the Rome Statute, by working with other Governments and with

non-governmental and intergovernmental organizations. Canada will be sponsoring ICC ratification and implementation events in 2000 and 2001 in various countries and regions of the world. As the number of countries ratifying or acceding to the Rome Statute grows, Canada will also work to ensure smooth entry into force and establishment of the International Criminal Court.

**The issue of the possible appointment of an independent expert charged with examining all aspects of the issue of impunity of perpetrators of human rights violations**

26. Canada recognizes the importance of striking a balance between the concerns expressed by many States on the proliferation of human rights mechanisms and the importance of combating impunity through the advancement of the issue at the Commission on Human Rights.

27. There have been numerous developments regarding the issue of impunity since the issuance of the 1997 Special Rapporteurs' Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity. Of particular importance has been the adoption of the Rome Statute.

28. In order to ensure that the impunity resolution remains current and effective while also ensuring that limited resources are efficiently utilized, Canada supports the appointment of an independent expert with a mandate to review the Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity and to make relevant recommendations to address the question of impunity.

## IV. CONCLUSION

29. All of the initiatives outlined above stem from Canada's commitment to the elimination of impunity for atrocities such as genocide, crimes against humanity and war crimes, and the creation of a culture of accountability. Canada will not be a safe haven for those individuals who have committed serious violations of international law.

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